

**IN THE COURT OF DISTRICT JUDGE-03
EAST DISTRICT, KARKARDOOMA COURTS: DELHI.**

Presided by :Ms. Pooja Jain

CS. No. 571/23

GANGA KAVERI CONSTRUCTION PVT. LTD. PLAINTIFF

Vs.

S.R.C. REALTORS PVT. LTD & ORS. DEFENDANTS

16.05.2025

ORDER

1. By this order shall dispose off the application under Order 39 rule 1 & 2 r/w section 151 CPC filed on behalf of plaintiff.

2. It is submitted that plaintiff has filed the present suit for declaration, permanent injunction and damages against the defendant. It is further submitted that plaintiff no.1 is a Company registered under the Companies Act, having its registered office at 2 F S-505, School Block Shakarpur, Delhi-92. Company was incorporated with the object as construction company. There are two directors in the plaintiff company one Mr. Praveen Kumar and Mr. Paramjeet Singh who are plaintiff no. 2

& 3. Plaintiffs are seeking declaration that defendant no. 1 & 2 may be declared that they are not the valid shareholders of the plaintiff no.1 Company, and to restrain them from further acting to disturb them and create nuisance, and seeks damages for the loss they have caused to the plaintiff. It is further submitted that defendant no. 1, 2 and 5 may be desist from creating any hindrance for grant of damages thereby directing the defendants to pay an amount of Rs.10,00,000/- towards the fraud played, harassment, and mental agony caused to the plaintiff, and indemnify for the costs incurred due to their conduct. It is further submitted that Mr. Rakesh Kumar Sinha and Mr. Kashi Nath Shukla were the directors of the company, and present directors shown their interest to take over the management of the company, accordingly, they approached the defendant no.3 and defendant no.3 introduce the defendant no.5 who is the statutory auditor of the company namely Mr. Pradeep Kumar Manglik with present directors, and instructed to the defendant no.5 to do the necessary formalities for handing over of the complete control, ownership and the management of the company. Plaintiff no.2 & 3 met with the defendant no.5 CA, statutory auditor of plaintiff no.1 company to discuss the modalities and proposal for taking over the management of company as well as for transfer of the share of plaintiff no.1 company. It is further submitted that defendant no.3 claimed to be the owner of 745000 shares of the plaintiff company and

also offered 5000 shares held by his wife namely Mrs. Ranjana Malviya/defendant no.4. The total consideration for take over the management of the company was agreed between them Rs.171 lakhs out of which Rs.75 lakhs was for purchase of equity shares of the defendant no.3 & 4 and balance of Rs. 96 lakhs was to be introduced as unsecured loan to repay the unsecured loans of defendant no.1 & 2 to the tune of Rs.107.22 lakhs and Rs. 43.79 lakhs respectively aggregating to 151.01 lakhs. Thereafter the plaintiff no.2 requested to defendant no.3 and defendant no.5 to share the relevant documents of the plaintiff company for verification purposes by his CA and Company Secretary for final decision making. Sh. Pradeep Kumar Manglik provided the copies of the company documents like Form DIR-12, Memorandum & Article of Association. It is further submitted that after incriminating admission of cheating, siphoning of funds, fraud and criminal conspiracy between Mr. Pradeep Kumar Manglik & Mr. Purshottam Kumar Choubey, the plaintiff no.2 asked his CA and CA to carry out due diligence of past entries in the bank account of plaintiff company and all other records. It is further submitted that defendant companies are claiming that they are the shareholders of plaintiff company, however, from the perusal of the Balance Sheets of the defendants as well as account statement and also the Balance Sheets of the plaintiff no.1 company, there is no such record which shows that defendant companies have paid any sale consideration

against the alleged shares. It is further submitted that burden of proof lies upon the defendant companies to adduce the evidence about the payment of the price as sale consideration against the shares as the same is within their specific knowledge. Plaintiffs assert that the defendants are not and were never the shareholder of plaintiff no.1 company and they were never allotted any share certificates as they did not apply for any shares, or paid any share consideration or subscription money. It is further submitted that defendants no.1, 2 and 5 are unlawfully and wrongfully trying to control the plaintiff no.1 company under the garb of the frivolous and fabricated accounting entries as well as misconceived litigation. It is further submitted that balance of convenience lies in favour of plaintiff. It is therefore requested that ad-interim injunction restraining defendant no.1, 2, 3, 4, and 5 and their associates/agents/representatives/ employees etc. from in any manner disturbing the peaceful functioning of the plaintiff no.1 company till final decision of the case. Hence, the present application is filed.

3. Reply to the application has not been filed by the defendants, however, Ld. Counsel for defendant no.1 & 2 has straightaway argue on the same. Ld counsel for defendants has vehemently opposed the application and submitted that present application is not maintainable. Ld. Counsel for defendant has also

submitted that present suit is barred by Section 430 of Companies Act 2013. It is further submitted that plaintiffs does not have cause of action to file the present suit and plaintiffs have not approached the court with clean hands.

4. It is also stated in the written statement that this court does not have jurisdiction to try the present suit and Hon'ble NCLT has the jurisdiction. It is further submitted that defendants herein have preferred a petition filed prior in time under Section 241 and 242 of the Companies Act, 2013 bearing Company Petition No. 205 of 2021 titled as S.R.C. Realtors Pvt. Ltd. & Ors. Vs. Ganga Cavery Constructions Pvt. Ltd. before Hon'ble NCLT, New Delhi, Court-II, alleging the shareholding of the plaintiff no. 2 & 3 in the plaintiff company. It is further submitted that when the defendants itself have challenged illegal shareholding of the plaintiff no. 2 & 3 in the plaintiff no.1 company, all the consequential illegal and oppressive acts will be rendered void-ab-initio. It is further submitted that plaintiff no.2 is not a legitimate shareholder of plaintiff no.1 company. The plaintiff no.1 Company is a company incorporated at the behest of Mr. Purshottam Kumar Choubey and inter alia involved in government construction project. Defendant no.1 and 2 are managed by Mr. Purushottam Kumar Choubey who is the promoter of the said companies. The incorporation of the plaintiff no.1 company was the

brainchild of Mr. Purushottam Kumar Choubey and he was instrumental for bringing in investment and business in the plaintiff no.1 company. Mr. Purushottam Kumar Choubey was behind the origin of brand name Ganga Kavery by initially opening a Saree Shop named Ganga Kavery in the year 1981, and the business was under his sole proprietorship. Mr. Purushottam Kumar Choubey by using his leadership, goodwill and connections got the plaintiff no.1 company a tender in Jharkhand for mining of sand. The tender money of Rs.2.98 crores was paid by the defendant no.1 and 2 companies through their bank accounts on behalf of the plaintiff no.1 company. In the year 2015 defendant no.1 company invested an amount of Rs. 2,98,05,739/- in total on different dates in the plaintiff no.1 company. Different amounts on different dates amounting to a sum of Rs.19,00,000/- in total were transferred to the personal account of defendant no.3 which amounts to siphoning off funds by the defendant no.3. Initially all the payments were used to be done through the personal account of Mr. Purushottam Kumar Choubey or defendant no.1 and 2 bank account via DD mode of payment. Multiple transactions took place with respect to payments towards MPS and DRAIPLGKC. The defendant no.1 and 2 have invested huge capital in the plaintiff no.1 and deposited amount worth lakhs in the plaintiff no.1 company. Thereafter, defendant no.3 transferred money worth lakhs to his personal account and other accounts on different dates respectively. In the period

between 2016-2017 itself an amount of Rs. 38 lakhs on different dated 07.10.2016,, 10.10.2016 and 03.03.2017 was transferred by defendant no.3 to his personal account. When Mr. Purushottam Kumar Choubey confronted the defendant no.3 and 4 about the gross financial mismanagement going on in the plaintiff no.1 company; an oral family settlement was arrived between the parties and defendant no.3 and 4 offered and agreed to give up the shareholding control of plaintiff no.1 company and bring the defendant no.1 & 2 companies as shareholders in the plaintiff no.1 company. Board of the plaintiff no.1 company allotted shares to the defendants in the meeting of Board Directors. The defendant no.1 was allotted shares worth Rs.20,00,000/- and defendant no.2 was allotted shares worth Rs.30,00,000/-. It was the loans of the defendant no.1 & 2 against which equity shares were allotted to capitalize the growth of plaintiff no.1 company. Defendant no.1 came to know from the MCA web portal that the digital signatures were utilized to upload various backdated illegal documents on behalf of plaintiff no.1 company including documents relating to increase of authorized share capital, allotment of additional shares, resignation of directors etc. After taking control of the digital signatures of Mrs. Madhubala by manipulating and forgery of documents on 17.01.2021, they created many backdated documents, forged many documents showing forged signatures and misusing digital signatures of Mrs. Madhubala. The fraud

of plaintiffs is writ large since the plaintiffs on 29.01.2021 showed Mrs. Madhubala as a director of the company to misuse her digital signatures for filing various forms including DIR 12, before the Registrar of Companies. Defendant no.3 after fraudulently taking control of the digital signatures of Mrs. Madhubala, executed their illegal strategy by fabricating documents and backdated them to take over the plaintiff no. 1 company from the defendant no.1 and 2 companies. Defendant no.1 & 2 were constrained to approach the Hon'ble NCLT with filing of petition under Section 241 and 242 of the Companies Act 2013, bearing Company Petition No. 205/21, titled as S.R.C. Realtors Pvt. Ltd. & Ors. Vs. Ganga Kavery Constructions Pvt. Ltd. & Ors. alleging the shareholding of the plaintiff no.2 and 3 in the plaintiff no.1 company and also various act of oppression and mismanagement in the plaintiff no.1 company. It is further submitted in the written statement that until and unless the shareholding of plaintiff no.2 & 3 is crystallized before Hon'ble NCLT, he cannot initiate any legal proceedings on behalf of the plaintiff no.1 company. It is beyond understanding to the defendants that as to how plaintiffs can institute the suit without Hon'ble NCLT declaring plaintiff no.2 as a genuine shareholder of plaintiff no.1 company. When the shareholding of plaintiff no.2 is itself under knife, how can he file the suit. If the suit is proceeded by this court there may be contradictory judgment, hence, in order to avoid multiplicity of

judgments the suit deserved to be dismissed. It is further submitted that balance of convenience does not lie in favour of plaintiffs and prayed for dismissal of the present application.

5. Before advertng to the merits of matter, it is necessary to notice the settled law relating to grant of interim injunction, as reiterated by Hon'ble Apex Court in **Makers Development Centre Services Pvt. Ltd. vs. M.Visvesvaraya Industrial Research and Development Centre [2012(1) SCC 735]**, wherein it has been observed as under :

“...It is settled law that while passing an interim order of injunction under Order 39 Rules 1 and 2 of the Code of Civil Procedure, 1908, the court is required to consider three basis principles, namely, (a) prima facie case, (b) balance of convenience and inconvenience, and (c) irreparable loss and injury. In addition to above mentioned three basic principles, a court while granting injunction must also take into consideration the conduct of the parties”

6. As far as it is concerned with the maintainability of the present suit, the said issue has already been decided on 20.02.2025. Therefore, the objection raised by the defendant in their written statement

with respect to the jurisdiction of this Court to try the present matter not being discussed here.

7. Plaintiff has filed the present suit for declaration, permanent injunction and damages against the defendant. The plaintiffs have made allegations against the defendants in their plaint stating that the defendant no.5 / Auditor of plaintiff no. 1 company with the collusion of one Sh. Purushottam Kumar Chobey/ director and promotor of defendant no.1 & 2 companies created false and frivolous entries in the books of plaintiff no.1 company. These entries are indicating that the defendant no.1 and 2 companies are share holders of plaintiff no.1 company, however, the defendant no.1 & 2 have never paid any subscription money and consideration price for purchasing the shares of plaintiff no.1 company. It is pertinent to mention here that the plaintiff has categorically mentioned the fraudulent act of the defendants in para no.5 (xvii) to 5 (xxxix) of the plaint. It is also pertinent to mention here that the specific case of the plaintiffs is of fraud and the said fraud is to be adjudicated upon adducing evidence by both the parties before the civil court.

8. The plaintiff has placed on record the current Master Data of the plaintiff no.1 company. According to which the authorized capital and paid up capital of plaintiff no.1 company is Rs.1.25 crores and

plaintiff no.2 & 3 are two directors of the plaintiff no.1 company. As per same document both the directors have been in directorship from 05.03.2021. The plaintiff no.2 placed on record his bank statement, as per which he transferred Rs.96 lakhs in the account of plaintiff no.1 company as stated by him in his plaint in para 5 (xvii) for clearing unsecured loan of defendant no.1 & 2 which was standing in the books of plaintiff no.1 company. On the same date i.e. 26.04.2021 plaintiff no.2 transferred Rs.74,50,000/- in the bank account of defendant no.3 through RTGS for purchasing the shares of plaintiff no.1 company held by defendant no.3 and Rs.50,000/- in the bank account of Ms. Ranjana Malviya through NEFT for purchasing the shares of plaintiff no.1 company. He further placed on record the bank statement of plaintiff no.1 company. According to which the above said Rs. 96 lakhs were transferred to defendant no.1 company during the period 19.06.2021 to 07.06.2021. Having observed so, it is prima facie clear that the plaintiff no.2 & 3 are holding majority shares in the plaintiff no.1 company and are also directors of the plaintiff no.1 company at present.

9. In view of above, the plaintiffs are able to show prima face case in their favour, so balance of convenience also lies in their favour. Further, in case this application is not allowed and the defendants creates hindrance in the functioning of plaintiff company, the plaintiffs might

suffer irreparable loss. Moreover, matter is at the initial stage and issues are yet to be framed in the present matter. No prejudice would be caused to the defendants, if interim injunction is granted to the plaintiffs. What is actual fate of present matter, shall be decided during trial after leading evidence from both side. Trial will take a long time. Matter is now before the court and the court is duty bound to protect functioning/work of plaintiff company. In view of above, considering the facts and circumstances of the present case, to avoid multiplicity of proceedings, to protect the interest of parties, the present application is being disposed off with the following order:

ORDER

10. The application u/o 39 rule 1 & 2 r/w section 151 CPC is allowed. Ad-interim injunction is granted to plaintiffs thereby restraining defendants and their associates/agents/representatives/ employees etc. from disturbing the peaceful functioning of the plaintiff no.1 company till final decision of the case.

(Pooja Jain)
District Judge-03/NB
East/KKD Courts/Delhi
16.05.2025